

APPEAL NO. 020657  
FILED APRIL 30, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 22, 2002. The appellant (self-insured) has appealed, claiming that the hearing officer erred in her determination that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 17th quarter based on an inability to work. The claimant has responded, urging that the hearing officer's determination be affirmed.

DECISION

Affirmed.

The claimant contends that she has no ability to work. The law regarding SIBs, good faith, and an assertion that there was no ability to work at all during the qualifying period is discussed in Texas Workers' Compensation Commission Appeal No. 000004, decided February 15, 2000. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)) provides that an employee has acted in good faith if the employee

has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work[.]

The hearing officer determined that a report from the treating physician dated November 21, 2001, specifically explains how the claimant's injury causes a total inability to work. Moreover, we have also indicated in Texas Workers' Compensation Commission Appeal No. 010549, decided April 23, 2001, and Texas Workers' Compensation Commission Appeal No. 002160, decided October 23, 2000, that a doctor may incorporate, by reference, other medical reports. See *also* Texas Workers' Compensation Commission Appeal No. 010897, decided May 30, 2001. Accordingly, we find sufficient facts in the record to support the hearing officer's determination.

Further, the self-insured contends that there were "other records" indicating that the claimant may have been capable of some work, precluding a determination that the claimant is entitled to SIBs. The hearing officer explained why she did not find that the evidence showed an ability to work. "The mere existence of a medical report stating the claimant had an ability to work alone does not mandate that a hearing officer find that other records showed an ability to work" (Texas Workers' Compensation Commission Appeal No. 000302, decided March 27, 2000). The hearing officer still may look at the evidence and determine that it failed to show this. Here the hearing officer explained her reasoning in not giving any weight to the evidence that the claimant was able to work and we will not substitute our judgment for hers in regard to this factual determination.

Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion of the evidence for that of the hearing officer.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**RON JOSSELET, EXECUTIVE DIRECTOR  
300 W. 15TH STREET  
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR  
AUSTIN, TEXAS 78701.**

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Terri Kay Oliver  
Appeals Judge

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Robert W. Potts  
Appeals Judge